

FILED 10 SEP 8 15:07/STC/OF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SOTERO GONZALEZ,

Civil Case No. 08-782-AC

Petitioner,

O R D E R

v.

BOB MARTINEZ,

Respondent.

C. Renee Manes
Assistant Federal Public Defender
101 SW Main Street, Suite 1700
Portland, Oregon 97204

Attorney for Petitioner

John R. Kroger
Attorney General

Kristen E. Boyd
Assistant Attorney General
Department of Justice
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Attorneys for Respondent

KING, Judge:

The Honorable John V. Acosta, United States Magistrate Judge, filed Findings and Recommendation on August 12, 2010. Petitioner filed timely objections to the Findings and Recommendation.

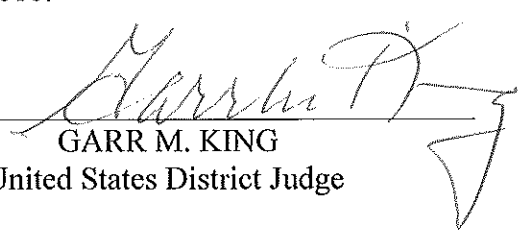
When either party objects to any portion of a magistrate's Findings and Recommendation concerning a dispositive motion or prisoner petition, the district court must make a de novo determination of that portion of the magistrate's report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). This court has, therefore, given de novo review of the rulings of Magistrate Judge Acosta.

This court ADOPTS the Findings and Recommendation of Magistrate Judge Acosta (#40) dated August 12, 2010 in its entirety.

IT IS HEREBY ORDERED that petitioner's request for an evidentiary hearing is denied and the Petition for Writ of Habeas Corpus is dismissed. Because petitioner has made a substantial showing of the denial of a constitutional right, a certificate of appealability is granted

on whether the procedural gateway for claims of actual innocence set forth in Schlup v. Delo, 513 U.S. 298 (1995), is applicable to the statute of limitations in 28 U.S.C. § 2244(d). See 28 U.S.C. § 2253(c)(2).

DATED this 8th day of September, 2010.



GARR M. KING
United States District Judge